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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,234	12/31/2003	Shigeo Yaguchi	1760.1001	7113
21171	7590	02/02/2009		
STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			EXAMINER	
			BUL VY Q	
			ART UNIT	PAPER NUMBER
			3773	
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			02/02/2009 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/748,234

**Applicant(s)**

YAGUCHI, SHIGEO

**Examiner**

Vy Q. Bui

**Art Unit**

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 September 2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 17-19 and 22-34 is/are pending in the application.  
4a) Of the above claim(s) 17-19 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 22-34 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

Claims 26-27, 29-30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions (Fig. 3A, 3B), there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 11/19/2007.

As pointed out in the "Office Action" (paper 7/6/2008), the restriction was proper and is now made final. This application contains claims 26-27, 29-30 drawn to an invention nonelected with traverse in the reply filed on 11/19/2007. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 22-25, 28 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Householder-5,290,292.

As to claims 1-4, Householder-5,290,292 (Fig. 1-7) discloses an ophthalmic device including single rod handle comprising linear handle portion 4 of a smooth stainless steel wire or other smooth rigid material (col. 3, lines 7-9), end 7, planar pad formed by linear tips 8 and 10 diverging from end 7 (Figs. 5-6), each linear tip 8 or 10 extends either upward/leftward or downward/rightward relative to linear handle portion 4, 2<sup>nd</sup> opposite end bent relatively to linear portion 4 (Fig. 5-6) and "O-shaped" stop (Fig. 5) substantially as recited in the claims.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Householder-5,290,292.

As to claim 31, Householder-5,290,292 does not explicitly disclose the device made of a material as recited in the claims. However, the materials as recited in the claims are well known materials used in medical art because they are biocompatible and flexible. For example, Barot-5,807,244 (col. 3, lines 17-32) discloses an ophthalmic device comprising hook 5 or core 2 made of a plastic or polymer for the bio-compatibility and flexibility of the material. It would have been obvious to one of ordinary skill in the art to make a Householder-5,290,292 device of a material as recited in the claims, as this material would be biocompatible and flexible to fit the application of an ophthalmic device.

As to claim 33, Householder-5,290,292 does not explicitly disclose the pad width in the range from 1mm to 15 mm. However, sizing or dimensioning a device to fit the application of the device is considered as within level of one of ordinary skill in the art. It would have been obvious to one of ordinary skill in the art to make a Householder-5,290,292 device to have the dimension as recited in the claim to fit the application of the device as an ophthalmic device.

2. Claim 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Householder-5,290,292 in view of Barot-5,807,244.

As to claim 34, Householder-5,290,292 does not explicitly disclose the linear tips 8 and 10 is more flexible than handle 4. However, it would be obvious to one of ordinary skill in the art

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to provide more rigid handle 4 for easy handling of the device and more flexible pad formed by linear tips 8 and 10 to avoid injuring to the eye of a patient.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vy Q. Bui/

Primary Examiner, Art Unit 3773